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11 Consumer Opinion LLC

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14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 ABBEY DENTAL CENTER, INC.,
17 a Nevada Corporation,

18 Plaintiff,

19 v.

20 CONSUMER OPINION LLC, a Nevada
21 Limited liability company; DOES 1-10;
22 and ROE ENTITIES 1-10, inclusive,

23 Defendants.

24 Case No.: 2:15-cv-02069-GMN-PAL

25 **DEFENDANT CONSUMER OPINION LLC'S**
MOTION FOR TEMPORARY STAY OF
CASE UNTIL THE RULING ON
DEFENDANT'S SECOND SPECIAL
MOTION TO DISMISS FIRST AMENDED
COMPLAINT PURSUANT TO NRS 41.660
AND MOTION FOR SUMMARY
JUDGMENT (DOC. # 30)

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1 This Motion is necessary because this is a Strategic Lawsuit Against Public
2 Participation (“SLAPP” suit). The point of the suit is not to bring supportable claims
3 but to harass the Defendant. In these cases, the plaintiff hopes that the pressure
4 of continued litigation costs and abusive discovery will force the defendant to
5 engage in self-censorship rather than resolve the claims on the merits.

6 While the Anti-SLAPP statute and Rule 56 permit the parties to file a motion
7 to take targeted discovery, Defendant (instead of making Plaintiff file a motion)
8 voluntarily participated in pre-Rule 26 conference discovery (Doc. No. 35-2).
9 Plaintiff produced extensive responses to Plaintiff’s discovery requests (Doc. Nos.
10 34-2 to 34-4, 35-21), and agreed to produce a 30(b)(6) witness for deposition (Doc.
11 Nos. 35-12, 35-13, 35-19, 35-22). Moreover, both Parties have agreed that
12 additional discovery is unnecessary. (See Doc. Nos. 36 at 17, 37 at 17). However,
13 throughout the process, Plaintiff has made it clear that its desire is only to increase
14 Defendant’s fees.

15 Normally when a motion is filed under Nevada’s Anti-SLAPP law in Nevada
16 state court, all further action in the case is stayed unless the non-moving party
17 makes a specific motion with specific requests for discovery. See NRS 41.660(3)(e).
18 Since the Anti-SLAPP statute is meant to address abusive lawsuits to thwart free
19 speech, this stay occurs to prevent a plaintiff from driving up a defendant’s costs
20 before the court decides the motion. However, in federal court, the Anti-SLAPP
21 statute’s procedural rules likely do not apply; only its substantive provisions do.
22 While the issue has not yet been specifically addressed by Nevada’s federal
23 courts, NRS 41.660(3)(e) is most likely inapplicable to this case as its California
24 analogue’s discovery stay has been found to be a procedural component of the
25 statute, separable from the substantive provisions.

26 While this specific issue has not been decided in this Court, California’s
27 federal courts have discussed whether to apply a stay pursuant to California’s

1 Anti-SLAPP statute.¹ In *Aeroplate Corp. v. Arch Ins. Co.*, the U.S. District Court for
2 the Eastern District of California held:

3 [T]he discovery limiting provisions of [the California Anti-
4 SLAPP statute] collide with the discovery-permitting
5 provisions of Rule 56, and therefore are not available in
6 federal court unless either: (1) the factual basis of the
7 case has been developed through discovery or similar
8 prior proceedings to the extent a motion for summary
judgment would be appropriate; (2) the parties agree
that further discovery is not necessary; or (3) **the only
issue presented by the motion is an issue of law** and the
motion is suitable for decision as a motion to dismiss
pursuant to Rule 12(b)(6).

9 2006 U.S. Dist. LEXIS 82180, at *9 (E.D. Cal. Nov. 9, 2006) (emphasis added) (internal
10 citations omitted). California courts have also focused on whether discovery is
11 “essential to [the plaintiff’s] opposition under Rule 56.” See, e.g., *New Net, Inc. v.
12 Lavasoft*, 356 F. Supp. 2d 1090, 1101 (C.D. Cal. 2004); *Price v. Stossel*, 590 F. Supp.
13 2d 1262, 1269 (C.D. Cal. 2008) (collecting cases).

14 In this case, all three factors are present. There has already been extensive
15 factual discovery. The Parties have agreed that additional discovery is
16 unnecessary. Finally, for all of Plaintiff’s claims, the only issues presented by
17 Defendant’s Motion are pure issues of law.

18 Moreover, this Court has the inherent power to manage its docket under
19 Rule 16 of the Federal Rules of Civil Procedure. The Court should use that power
20 to give effect to the spirit of the Anti-SLAPP statute without invoking its procedural
21 provisions. Defendant’s request is compatible with the Court’s power to allow or
22 deny additional discovery under Fed. R. Civ. P. 56(d) when a motion for summary
23 judgment is pending. While the Court is not required to stay the case in this
24 instance, it makes little sense to demand the Parties continue running up litigation

25
26 ¹ California’s Anti-SLAPP statute is so similar to Nevada’s that Nevada courts
have ruled that Nevada judges should look to it for guidance in interpreting
27 Nevada’s statute. See *John v. Douglas County Sch. Dist.*, 125 Nev. 746, 754 (2009).

1 costs when their efforts may be entirely for naught if Defendant's Motion is
2 granted.

3 For all of the reasons discussed in the Anti-SLAPP Motion (ECF Nos. 30-31)
4 and Defendant's Opposition to Motion for Extension of time to Respond to the
5 Anti-SLAPP Motion (ECF No. 35), it is readily apparent that this case is fully briefed
6 for a resolution as a matter of law, and no amount of additional factual
7 development will change the outcome. Accordingly, any continued action in
8 the case, until the Anti-SLAPP Motion is resolved, is unnecessary and likely a waste
9 of the Parties' and the Court's resources. As a matter of judicial economy, the
10 Court and the Parties would be better served if this matter were stayed while the
11 Court resolves the Anti-SLAPP Motion. Thus, Defendant respectfully requests that
12 the Court grant the instant Motion.

13
14 Dated this 8th day of February , 2017

15 Respectfully Submitted,

16 RANDAZZA LEGAL GROUP, PLLC

17 /s/ Marc J. Randazza

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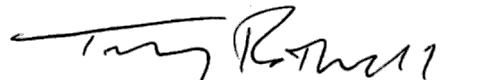
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27 Attorneys for Defendant,
Consumer Opinion LLC

1 Case No. 2:15-cv-02069-GMN-PAL
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3 **CERTIFICATE OF SERVICE**
4

5 I HEREBY CERTIFY that on February 8, 2017, I electronically filed the foregoing
6 document with the Clerk of the Court using CM/ECF. I further certify that a true
7 and correct copy of the foregoing document being served via transmission of
8 Notices of Electronic Filing generated by CM/ECF.
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10 Respectfully Submitted,
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